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29 March 1954

OGC HAS REVIEWED.

MEMORANDUM FOR: Acting Deputy Director (Administration)

SUBJECT: Staff Study -- Relief for Agency Accountable and Disbursing Officers for Shortages and Losses and Clarification of Agency Procedures Concerning Shortages and Overages

1. You have requested our concurrence and/or recommendations on the staff study submitted by the Office of the Comptroller, recommending that a policy be established to provide relief for individuals accountable for confidential funds where losses or deficiencies occur without their neglect or malfeasance, and recommending the adoption of certain procedures for the disposition of such cases.

2. This study apparently assumes that Agency regulations, as interpreted by this office, do not permit relief from liability though funds be lost without fault or neglect, with the result that employees of CIA are in a position less favorable than that of other Government officers. It may, therefore, be stated at the outset, that it is not our view that Agency regulations require that an employee be held responsible for a loss or deficiency in a confidential funds account regardless of the circumstances. However, it is our interpretation of the law, as it relates to a custodian of Government funds, that in a case of loss or deficiency, the individual accountable has the burden of showing his freedom from fault or neglect: i.e., the explanation submitted must be such as will permit the inference to be made that reasonable diligence was used in the performance of his trust; and that this burden may not be considered as being met by the mere submission of self-serving statements to the effect that "due diligence" was used or that "reasonable safeguards" were taken.

3. It will probably assist the application of our subsequent comments to here prologue by expanding the views asserted in our opinion dated 24 July 1953 on the subject of "Shortage in [redacted] Station Funds". It is the importance and innuendo imputed to that opinion which has given rise to the present proposals and staff study. It is to be noted that that case involved a definite factual situation which was submitted for decision. There, confidential funds were found to be missing which must be accounted for to Congress by certification of the Director. The latter has seen fit to delegate to the Deputy Director

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(Administration) by Confidential Funds Regulation 1.4(c), those questions of shortages arising from the peculiar accounting practices necessitated by operational activities. In the [redacted] case we merely decided that the facts there showed no basis for requiring a lesser standard of care because no operational necessity existed. The basis for excusing shortages in all instances is that the responsible employee affirmatively show two things; (1) that he was not negligent, and (2) that there was no malfeasance on his part. The file reciting the facts of that case showed that requirement number (2) had been met. The first requirement was not met because the money was quite possibly lost incident to its safe-keeping or in the disbursement procedures. In either instance it would amount to negligent handling on the part of the employee. We repeat, the burden is upon the employee to show there was no negligence.

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4. If the Director should see fit to adopt the recommended procedures, we find no legal objection. We are neither holding brief for the present procedures nor asserting that no changes of the regulations are needed. The purpose of this commentary is simply to dispel the mistaken impression that our opinion in the [redacted] case meant that there was no remedy for relief of shortages arising from non-operational activities, and to offer constructive criticism based upon legislation and legislative history on this problem in other branches of Government. All Government funds are vested with a character of high trust when deposited in the hands of employees. Confidential funds are even more so, because they are subject to no accounting control beyond CIA. What constitutes negligence in the handling of these funds must be judged by the peculiar circumstances resulting from operational activity. Where no such operational circumstances exist the ordinary criteria must apply. We perceive no inadequacy under the present status of the regulations and are thus opposed to a further delegation of this authority below its present high position in Agency structure. Moreover, we must likewise dissent to a delegation of this authority to more than one office of the Agency, even for the smaller amounts. Such a condition would result in establishing different standards of care and trust in various parts of the Agency and produce inequities between stations. Thus, we cannot concur in the efficacy of procedures which would permit either a local determination of the basic issue of care and diligence, or authorize the disposition of a case to be made on the recommendation of a board composed of members from the "affected" offices. We do not believe that such procedures can be deemed to observe adequately the high obligation of trust placed upon this Agency by the Congress.

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5. The matter of the loss of funds or deficiency in accounts as such is not peculiar to this Agency. It is a problem of such general nature throughout the entire Government that the Congress has seen fit to establish procedures for the relief of disbursing and accountable officers or agents under certain circumstances. The Act of August 1, 1947, 61 Stat. 720 (31 USC 82a-1) authorizes the General Accounting Office after consideration of the pertinent findings and, if in concurrence with the determinations and recommendations of the head of the department concerned, to relieve accountable officers or agents charged with responsibility for the loss or shortage of Government funds, if the head of the department determines (1) that such loss or deficiency occurred while the officer was acting in the discharge

of his official duties, or that such loss or deficiency occurred by reason of the act or omission of a subordinate of such officer or agent and (2) that such loss or deficiency occurred without fault or negligence on the part of such officer or agent. A copy of the statute, together with the report of the cognizant Senate committee is attached as Tab A.

6. While admittedly the procedures set forth in the Act may not be used to process a case of loss or deficiency of confidential funds, we suggest that consideration be given to adopting the substance of the statute to the internal processing of such cases. This could be accomplished by revising the regulations to entrust to the Office of the Comptroller the functions allocated to the "head of the department", with respect to findings and recommendations, and to confer upon the Deputy Director (Administration) the responsibilities for a final decision, otherwise exercised by the Comptroller General. Such a procedure would have a two-fold advantage in that it is more conducive to an objective determination of the question of personal liability, while also affording the opportunity to apply the same general principles to the consideration of each case. This, we believe, would do much to ensure that Agency employees receive the same consideration as afforded other Government officers, and at the same time preserve the integrity of the confidential funds system.

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Office of General Counsel

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Office of General Counsel

Attachment

Tab A

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Distribution:

Orig & 1 - Addressee
1 - chrono
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